

AMENDED IN ASSEMBLY JUNE 28, 2006
AMENDED IN ASSEMBLY JUNE 8, 2006
AMENDED IN ASSEMBLY MAY 4, 2006
AMENDED IN ASSEMBLY MARCH 15, 2006
AMENDED IN ASSEMBLY AUGUST 18, 2005

SENATE BILL

No. 202

Introduced by Senators Simitian, Figueroa, and Maldonado
(Principal coauthors: Assembly Members Leno and Pavley)
(Coauthors: Assembly Members Benoit and Cohn)

February 10, 2005

An act to add Section 638 to the Penal Code, relating to privacy.

LEGISLATIVE COUNSEL'S DIGEST

SB 202, as amended, Simitian. Privacy: telephone calling pattern record or list.

Existing law prohibits a telephone or telegraph corporation, with certain exceptions, from making available to any other person or corporation, without first obtaining a residential subscriber's consent in writing, the subscriber's personal calling patterns, including any listing of the telephone or other access numbers called by the subscriber.

Existing law pertaining to the protection of privacy, makes it a crime, punishable by fine or imprisonment or both, with certain exceptions, to wiretap, eavesdrop, or otherwise intercept telephone or telegraph communications without authorization.

This bill would make it a crime, punishable by fine, imprisonment, or both, to purchase, sell, offer to purchase or sell, or conspire to

purchase or sell, ~~any telephone calling pattern record or list, as specified,~~ without the written consent of the subscriber ~~whose information is contained in the,~~ or procure through fraud or deceit, a telephone calling pattern, record, or list. Because a violation of the bill's provisions would be a crime, this bill would impose a state-mandated local program by creating new crimes.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 638 is added to the Penal Code, to read:
2 638. (a) Any person who purchases, sells, offers to purchase
3 or sell, or conspires to purchase or sell any telephone calling
4 pattern record or list, without the written consent of the
5 subscriber ~~whose information is contained in the calling pattern,~~
6 ~~record, or list,~~ or any person who procures or obtains through
7 fraud or deceit, or attempts to procure or obtain through fraud or
8 deceit any telephone calling pattern, record, or list ~~without the~~
9 ~~written consent of the subscriber~~ shall be punished by a fine not
10 exceeding two thousand five hundred dollars (\$2,500), or by
11 imprisonment in a county jail not exceeding one year, or by both
12 a fine and imprisonment. If the person has previously been
13 convicted of a violation of this section, he or she is punishable by
14 a fine not exceeding ten thousand dollars (\$10,000), or by
15 imprisonment in a county jail not exceeding one year, or by
16 imprisonment in the state prison, or by both a fine and
17 imprisonment in a county jail or in the state prison.
18 (b) Any personal information contained in a telephone calling
19 pattern record or list that is obtained in violation of this section
20 shall be inadmissible as evidence in any judicial, administrative,
21 legislative, or other proceeding except when that information is
22 offered as proof in an action or prosecution for a violation of this
23 section.

(c) For purposes of this section:

(1) “Person” includes an individual, business association, partnership, limited partnership, corporation, limited liability company, or other legal entity.

(2) “Telephone calling pattern record or list” means information retained by a telephone ~~corporation~~ *company* that relates to the telephone number dialed by the ~~customer~~ *subscriber*, or other person using the ~~customer’s~~ *subscriber’s* telephone with permission, or the incoming number of a call directed to the ~~customer~~ *subscriber*, or other data related to such calls typically contained on a ~~customer~~ *subscriber* telephone bill such as the time the call started and ended, the duration of the call ~~and~~, any charges applied, *and any information described in subdivision (a) of Section 2891 of the Public Utilities Code* whether the call was made from or to a telephone connected to the public switched telephone network, a cordless telephone, as defined in Section 632.6, a telephony device operating over the Internet utilizing voice over Internet protocol, a satellite telephone, or commercially available interconnected mobile phone service that provides access to the public switched telephone network via a mobile communication device employing radiowave technology to transmit calls, including cellular radiotelephone, broadband Personal Communications Services, and digital Specialized Mobile Radio.

(3) *“Telephone company” means a telephone corporation as defined in Section 234 of the Public Utilities Code or any other person that provides residential or commercial telephone service to a subscriber utilizing any of the technologies or methods enumerated in paragraph (2).*

~~(3)~~

(4) For purposes of this section, “purchase” and “sell” shall not include information provided to a collection agency or assignee of the debt by the telephone corporation, and used exclusively for the collection of the unpaid debt, provided that the collection agency or assignee of the debt shall be liable for any disclosure of the information that is in violation of this section.

(d) An employer of, or entity contracting with, a person who violates subdivision (a) shall only be subject to prosecution pursuant to that ~~section~~ *provision* if the employer or contracting

1 entity knowingly allowed the employee or contractor to engage
2 in conduct that violated subdivision (a).

3 *(e) It is the intent of the Legislature to ensure that telephone*
4 *companies maintain telephone calling pattern records or lists in*
5 *the strictest confidence, and protect the privacy of their*
6 *subscribers with all due care. While it is not the intent of the*
7 *Legislature in this act to preclude the sharing of information that*
8 *is currently allowed by both state and federal laws and rules*
9 *governing those records, it is the Legislature's intent in this act*
10 *to preclude any unauthorized purchase or sale of that*
11 *information.*

12 ~~(e)~~
13 *(f)* This section shall not be construed to prevent a law
14 enforcement or prosecutorial agency, or any officer, employee, or
15 agent thereof from obtaining telephone records in connection
16 with the performance of the official duties of the agency
17 consistent with any other applicable state and federal law.

18 SEC. 2. No reimbursement is required by this act pursuant to
19 Section 6 of Article XIII B of the California Constitution because
20 the only costs that may be incurred by a local agency or school
21 district will be incurred because this act creates a new crime or
22 infraction, eliminates a crime or infraction, or changes the
23 penalty for a crime or infraction, within the meaning of Section
24 17556 of the Government Code, or changes the definition of a
25 crime within the meaning of Section 6 of Article XIII B of the
26 California Constitution.